

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION - TOLEDO**

Herbert J. Johnson, Jr.)	Case No:
)	
Plaintiff,)	Judge:
)	
v.)	Magistrate Judge:
)	
Transguard Insurance)	
Company of America, Inc.)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Transguard Insurance Company of America, Inc. (herein after referred to as “Defendant”) hereby files this Notice of Removal, pursuant to 28 U.S.C. § 1441, with the United States District Court for the Northern District of Ohio, Western Division. As grounds for removal, Defendant states as follows:

1. This case was commenced and is now pending in the Common Pleas Court of Auglaize County, Ohio, designated as Case No. 2017 CV 0088 on the docket, a true and accurate copy of which is attached hereto as Exhibit A.
2. The Complaint was filed on June 7, 2017. Defendant was served on June 9, 2017. Defendant filed an Answer to Plaintiff’s Complaint on July 5, 2017. A true and accurate copy of the Complaint is attached hereto as Exhibit B.
3. At the time of Plaintiff’s commencement of this action, Plaintiff was a citizen of the State of Ohio.
4. Defendant is a foreign corporation organized and existing under the laws of the State of Oklahoma. It was, at the time of commencement of this action, and still is, a non-citizen, having its principal place of business in the State of Illinois.

5. Thus, as between Plaintiff and Defendant the controversy is wholly between citizens of different states.

6. The United States District Court, pursuant to the provisions of 28 U.S.C. §1332, has jurisdiction over this action because there is complete diversity, and, upon information and belief, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Specifically, Plaintiff makes the following allegations in his Complaint:

- a. When working at a job site, Plaintiff tripped over a curb, sustaining various bodily injuries. (Compl., ¶¶ 7-10).
- b. As a result of the fall, Plaintiff required left shoulder surgery and can no longer work. (Compl., ¶¶ 17-19).
- c. Plaintiff maintained a disability insurance policy with Defendant and Defendant wrongfully refused to pay the Policy benefits to Plaintiff. (Compl., ¶¶ 6, 23-24).

7. Further, Plaintiffs' counsel refused to stipulate to the damages being under \$75,000.00 for removal purposes. He agreed the amount in controversy is over \$75,000.

8. This Notice is filed pursuant to 28 U.S.C. § 1441 within the time limits prescribed by 28 U.S.C. § 1446(b).

10. Defendant will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant provides notice that this action is removed to the United States District Court for the Northern District of Ohio, Western Division, pursuant to 28 U.S.C. §§ 1441 and 1446, and that the Common Pleas Court of Auglaize County, Ohio, shall proceed no further unless this case is remanded.

Respectfully submitted,

/s/ Patrick Kasson

Patrick Kasson (0055570)

REMINER CO., L.P.A.

200 Civic Center Drive, Suite 800

Columbus, Ohio 43215

(614) 228-1311; FAX: (614) 232-2410

pkasson@reminger.com

Counsel for Defendant Transguard Insurance

Company of America, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served via the Court's electronic mail system upon the following this 7th day of July, 2017.

Jason Flower
Huffman, Kelley, Brock & Gottschalk, LLC
540 W. Market St.
Lima, Ohio 45801
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F: (419) 221-3592
E: jnf@540westmarkt.com
Attorney for Plaintiff

/s/ Patrick Kasson

Patrick Kasson (0055570)

2017 CV 0088 JOHNSON JR, HERBERT J vs. TRANSGUARD INSURANCE COMPANY OF AMERICA INC FDP

Case Type	CIVIL	Case Status:	Open
File Date:	06/07/2017	DCM Track:	
Action:	OTHER CIVIL	Status Date:	06/07/2017
Case Judge:	PEPPLE, FREDERICK D	Next Event:	

All Information	Party	Docket	Financial	Receipt
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Docket Information

Date	Docket Text	Amount Owed
06/07/2017	COMPLAINT FOR DAMAGES ; JURY DEMAND HEREIN FILED Attorney: FLOWER ESQ, JASON (0085972)	\$25.00
06/07/2017	DEPOSIT Receipt: 141008 Date: 06/07/2017	\$153.00
06/07/2017	CLERK'S COMPUTER FUND CIVIL Receipt: 141008 Date: 06/07/2017	\$20.00
06/07/2017	LEGAL AID FEE Receipt: 141008 Date: 06/07/2017	\$26.00
06/07/2017	SPECIAL PROJECTS FUND- CPC Receipt: 141008 Date: 06/07/2017	\$20.00
06/07/2017	JUDICIAL COMPUTERIZATION FUND - CP Receipt: 141008 Date: 06/07/2017	\$6.00
06/07/2017	Issue Date: 06/07/2017 Service: SUMMONS TOGETHER WITH COPY OF COMPLAINT Method: CERTIFIED MAIL Cost Per: \$0.00	\$13.35
	TRANSGUARD INSURANCE COMPANY OF AMERICA INC PO BOX 2148 WARRENVILLE, IL 60555 Tracking No: 941472669904200809127	
06/12/2017	RETURN RECEIPT FILED (SIGNED BY D. JABON FOR TRANSGUARD INSURANCE COMPANY ON JUNE 9, 2017)	

Court of Common Pleas, Auglaize County, Ohio

SUMMONS

**COPY FOR
SERVICE**

CASE NO. 2017 CV 0088

bl
102148

SUMMONS ON COMPLAINT

HERBERT J JOHNSON JR
20160 MILLER ROAD
WAPAKONETA, OH 45895

Plaintiff

VS

TRANSGUARD INSURANCE COMPANY OF AMERICA INC
PO BOX 2148
WARRENVILLE, IL 60555

Defendants

RECEIVED

JUN 12 2017

CAT INS GRP

To the above named Defendants

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff named herein.

You are hereby required to serve upon the plaintiffs' attorney, or upon the plaintiff if they have no attorney of record, a copy of your answer to the complaint within 28 days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three days after service on Plaintiffs' Attorney.

The name and address of the Plaintiffs' Attorney is as follows:

JASON FLOWER ESQ
540 WEST MARKET STREET
LIMA, OH 45801

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

I. JEAN MECKSTROTH, CLERK OF COURTS

BY: Kathy Macle
DEPUTY CLERK

June 7, 2017

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2017 JUN -7 PM 1:28

I. JEAN MECKSTROTH
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF AUGLAIZE COUNTY, OHIO

HERBERT J. JOHNSON, JR.)

20160 Miller Road)

Wapakoneta, Ohio 45895)

Plaintiff,)

v.)

TRANSGUARD INSURANCE)
COMPANY OF AMERICA, INC.)

P.O. Box 2148)

Warrenville, IL 60555)

Defendant.)

2017 CV 0088

COMPLAINT FOR DAMAGES;
JURY DEMAND HEREIN

Now comes plaintiff, Herbert J. Johnson, Jr., by and through his undersigned counsel, Jason N. Flower, and for his Complaint against Transguard Insurance Company of America, timely states and alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff Herbert J. Johnson, Jr. (hereinafter "Plaintiff") is an individual who at all times pertaining hereto resided in Auglaize County, Ohio.
2. Defendant Transguard Insurance Company of America (hereinafter "Defendant") is an insurance company that does business throughout the country, including the County of Auglaize, State of Ohio.
3. Jurisdiction is proper in this Court because the alleged allegations occurred in Auglaize County, Ohio.
4. Venue is proper in this Court because Defendant's acts and omissions giving rise to liability occurred in Auglaize County, Ohio.

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GOTTSCALK, LLC
ATTORNEYS AT LAW

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GENERAL ALLEGATIONS

5. Plaintiff incorporates each and all of the allegations contained in the foregoing paragraphs as though fully set forth herein.
6. Plaintiff entered into a contract for disability insurance with Defendant at all times relevant.
7. On April 16, 2015 Plaintiff tripped over the curb while working at a job site and fell onto his left elbow. He instantly experienced pain in his left shoulder, hip, and buttocks.
8. Immediately following the fall, Plaintiff was evaluated at the plant's site where he had just finished loading his semi-truck trailer. A bandage was placed on his left elbow at this time.
9. On May 25, 2015 Plaintiff visited the Emergency Room at Lima Memorial Health Systems ("LMH") and reported having pain in his shoulder and upper back as a result of the fall.
10. X-rays revealed a compression fracture of the T-8 vertebrae in his back which may be related to the fall and was categorized as "age-indeterminate." Plaintiff reported no pre-fall pain with his back, and identified all traumas as beginning the date of the fall.
11. Following Plaintiff's visit to LMH, he was referred to the Orthopaedic Institute of Ohio ("OIO") for further evaluation.
12. On June 2, 2015 Plaintiff visited OIO for the first time, where he once again reported pain in his neck, left arm and shoulder. All statements recorded in medical notes regarding the injury, date, time and location are consistent with the LMH report.
13. Plaintiff was then diagnosed with a compressive fracture, a shoulder sprain, cervicalgia (neck pain) and radiculopathy.
14. There is no mention in any of the medical records of any indicia of degenerative conditions causing the shoulder pain.
15. Plaintiff continued to visit OIO on many occasions, repeatedly contributing his pain and injuries to the fall that had occurred on April 16, 2015. Following these visits, Dr. Fumich diagnosed Plaintiff with joint

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pain in his left shoulder. Plaintiff also was ordered to have an MRI conducted.

16. On September 24, 2015, Dr. Ugorji performed and interpreted the MRI, finding an injury similar to a SLAP-3 tear, a small rotator cuff tear, and another tear at the top of Plaintiff's bicep.
17. Plaintiff is then referred to Dr. Patel, who assessed Plaintiff's shoulder injury "as a consequence of [Plaintiff's] work injury...directly related from the impact of the trauma [from falling]."
18. On November 30, 2015 Dr. Patel performed surgery on Plaintiff's left shoulder.
19. On or about November 25, 2015, Plaintiff informed Defendant the he could no longer work due to his injury and filed a claim.
20. Thereafter, Defendant denied Plaintiff's claim for disability.

WHEREFORE, as a result of these and other unalleged acts for each of the causes of action pleaded hereafter, Plaintiff prays for relief as set forth below.

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

21. Plaintiff incorporates each and all of the allegations contained in the foregoing paragraphs as though fully set forth herein.
22. Plaintiff properly submitted a claim for insurance benefits to Defendant, under and pursuant to the terms of his Policy with Defendants.
23. All premiums due from Plaintiff were paid at all relevant times and the Policy was in full force and effect at the time Plaintiff's injury began.
24. Defendant has breached the agreement and has wrongfully refused to pay the Policy benefits to Plaintiff without just cause.
25. Plaintiff has suffered accrued damages in excess of \$25,000.00

WHEREFORE, as a result of these and other unalleged acts for each of the causes of action pleaded hereafter, Plaintiff prays for relief as set forth below.

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SECOND CAUSE OF ACTION: BREACH OF DUTY OF GOOD
FAITH AND FAIR DEALING

26. Plaintiff incorporates each and all of the allegations contained in the foregoing paragraphs as though fully set forth herein.
27. Defendant has breached its duty of good faith and fair dealing owed to Plaintiff in the following respects:
- a. Unreasonable and bad faith failure to pay insurance benefits at a time when Defendant knew Plaintiff was entitled to those benefits under the terms of the Policy.
 - b. Unreasonably misrepresenting to Plaintiff pertinent facts and insurance policy provisions in relation to the insurance coverages at issue.
 - c. Bad faith failure to reasonably and promptly investigate and process Plaintiff's claim for insurance benefits.
 - d. Not attempting in good faith to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim at a time when liability was reasonably clear.
 - e. Bad faith failure to provide a reasonable explanation of the basis relied on in the Policy, in relation to the applicable facts, and its refusal to honor Plaintiff's claim.
28. Based upon information and belief, Plaintiff alleges that Defendant has breached its duty of good faith and fair dealing owed to Plaintiff by other acts and omissions of which Plaintiff is presently unaware. Plaintiff will seek leave of the Court to amend this Complaint at such times as Plaintiff discovers the other acts or omissions of Defendant constituting said breach and to name such defendants as may be identified.
29. As a proximate result of the mentioned wrongful conduct of Defendant, Plaintiff has suffered, and will continue to suffer in the future, damages under the Policy, plus interest, for a total amount to be shown at the time of trial.

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30. An additional result of Defendant's wrongful denial of Policy benefits has been Plaintiff's anxiety, worry, and stress. Plaintiff even had to sell his semi-truck, forgoing his livelihood as a truck driver, to maintain and pay for his doctor appointments as a result of the fall.
31. Defendant's conduct described above was intended by it to cause injury to Plaintiff or was despicable conduct carried on by Defendant with a willful and conscious disregard of the rights of Plaintiff; subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights; and was intentional misrepresentation, deceit, or concealment of material facts known to Defendant, with the intention, implied or in fact, to deprive Plaintiff of property, legal rights, or to otherwise oppress and/or cause injury, such as to constitute malice, oppression, or fraud, thereby entitling Plaintiff to punitive and/or exemplary damages in an amount appropriate to punish or set an example of Defendant.

WHEREFORE, as a result of these and other unalleged acts for each of the causes of action pleaded hereafter, Plaintiff prays for relief as set forth below.

WHEREFORE, Plaintiff prays for the following relief:

1. For damages in excess of \$25,000.00;
2. For total cost of medical expenses;
3. For damages for anxiety, mental and emotional distress and other incidental damages in a sum to be determined at trial;
4. For interest on the above amounts;
5. For cost of suit;
6. For attorney's fees;
7. For punitive damages;
8. For other relief as the court may order.

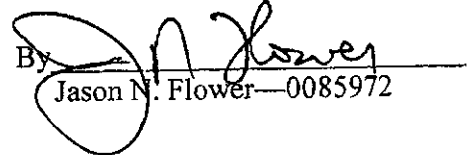
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Respectfully Submitted,

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Facsimile: 419-221-3592
Email: jnf@540westmarkt.com
ATTORNEYS FOR PLAINTIFF

By 
Jason N. Flower—0085972

JURY DEMAND

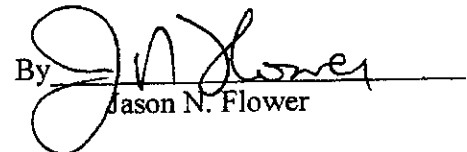
Plaintiff demands a trial by jury for all issues presented in the above captioned case.

By 
Jason N. Flower

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please make service on Defendant by certified mail, return receipt requested, at the above captioned addresses, pursuant to Civil Rule 4.1(A).

By 
Jason N. Flower

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